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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,946	02/06/2004	Yiu-Ming Leung	MS307156.I/40062.0235US01	7981
27488	7590	01/03/2007	EXAMINER	
MERCHANT & GOULD (MICROSOFT)			FLEURANTIN, JEAN B	
P.O. BOX 2903			ART UNIT	
MINNEAPOLIS, MN 55402-0903			PAPER NUMBER	
2162				
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	01/03/2007	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/773,946	LEUNG, YIU-MING	
	Examiner	Art Unit	
	JEAN B. FLEURANTIN	2162	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 10/17/06.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-3,5-7,9-13 and 15-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-3,5-7,9-13 and 15-23 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

DETAILED ACTION

1. This is in response to Applicants' remarks filed on 10/17/06, with respect to claims 1-3, 5-7, 9-13 and 15-23 have been fully considered and are persuasive. Therefore, the rejection of last Office action has been withdrawn.

The following is the status of claims:

Claims 4, 8 and 14 have been canceled.

Claims 1-3, 5-7, 9-13 and 15-23 remain pending for examination.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 11/05/02. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

The Examiner noticed that a typographical error was introduced, which Examiner hereby clarifies, the date of the IDS indicated in page 2, of the last Office action should be 11/05/06. Thus, the IDS (the information disclosure statement) is being considered fully by the examiner.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-8 and 11-72 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As set forth in MPEP 2106:

Products may be either machines, manufactures, or compositions of matter.

A *machine* is "a concrete thing, consisting of parts or of certain devices and combinations of devices." *Burr v. Duryee*, 68 U.S. (1 Wall) 531, 570 (1863).

As per claims 1, 6 and 12.

The independent claims 1, 6 and 12, the method, program and system as recited in the claims, in view of the above cited MPEP section is not statutory, because "the act of creating does not include creating new nodes for the nodes having different properties" is not statutory, because the claimed physical structure implementation does not appear to be functional descriptive material and does not produce any tangible result. The claims lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material *per se*.

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." Both types of "descriptive material" are nonstatutory when claimed as descriptive material *per se*, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994). Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored on a computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. See

Diehr, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an algorithm in *Benson* were unpatentable as abstract ideas because "[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer.").

All dependent claims are rejected under the same rational.

Allowable Subject Matter

With respect to claims 1-3, 5-7, 9-13 and 15-23 are allowed over the prior art of record.

The following is an examiner's statement of reasons for allowance:

With respect to claims 1 and 6, the claimed features "in a computer system, a method for generating an XML payload from an XML list and independent of a schema associated with the XML list, the method comprising creating one or more nodes in the XML payload node tree to extend a branch from a current end node to a new end node if the of traversing the path does not find a node in the branch for each parent/child relationship in the path; omitting the step of creating if the act of traversing the path does find a node in the branch for each parent/child relationship in the path" in conjunction with other elements of the independent claims would not found anticipated or obvious over the prior art made of record. With respect to claim 12, the claimed features "a computer readable medium for storing computer instructions for a computer process for generating an XML payload from an XML list for multi-dimensional data independent of the schema of the data, the computer process comprising creating nodes in a node tree representative of the parent/child relationship if nodes for parent child relationships in the current shortest path are missing; omitting the step of creating node in the node tree if nodes for parent/child relationships in the current shortest path are found" in conjunction with other elements of the independent claims would not found anticipated or obvious over the prior art made of record.

The dependent claims, being definite, further limiting, and fully enabled by the specification are also allowed.

The closest prior art, Steven J. DeRose, relates to XML Linking. Wan et al., relates to Efficient Supporting XML Query and Keyword Search in Relational Database Systems but fail to teach the above limitations.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

CONTACT INFORMATION

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEAN B. FLEURANTIN whose telephone number is 571 – 272-4035. The examiner can normally be reached on 7:05 to 4:35.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOHN E BREENE can be reached on 571 – 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jean Bolte Fleurantin
Patent Examiner
Technology Center 2100
December 21, 2006